

**SIKKIM**

**GOVERNMENT**

**GAZETTE**



**EXTRAORDINARY  
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**Gangtok**

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**No. 248**

**HIGH COURT OF SIKKIM  
GANGTOK**

**No. 05/ HCS**

**Dated: 05.06.2014**

**NOTIFICATION**

In terms of the direction laid by the Hon'ble Apex Court in Writ Petition (C) No. 162/2013 Binu Tamta & Anr. Vs. High Court of Delhi & Ors. the High Court of Sikkim hereby makes the following regulation i.e. "**The Gender Sensitization and Sexual Harassment of Women at the High Court of Sikkim (Prevention, Prohibition & Redressal) Regulations, 2013.**"

**CHAPTER I**

**PRELIMINARY**

**1. Short title, extent and commencement-**

- (1) These Regulations may be called the Gender Sensitization & Sexual Harassment of Women at the High Court of Sikkim(Prevention, Prohibition and Redressal) Regulations, 2013.
- (2) They shall come into force on such date as the Chief Justice of the High Court of Sikkim may, by notification in the Official Gazette, appoint.

**2. Definitions –**

In these Regulations, unless the context otherwise requires-

- (a) "aggrieved woman" means, in relation to the High Court, any female, of any age, whether employed or not, who claims to have been subjected to any act of sexual harassment by any person in the High Court precincts;
- (b) "appropriate Authority" means in relation to the High Court of Sikkim, the sitting Chief Justice;

- (c) "Chairperson" means the Chairperson of the High Court Gender Sensitization and Internal Complaints Committee (GSICC);
- (d) "Chief Justice of the High Court of Sikkim" in context of the present Regulations means the sitting Chief Justice of the High Court;
- (e) "habitual Respondent" is a person against whom a previous Complaint of sexual harassment has been received by the GSICC or any other authority/body on earlier occasion, irrespective of whether the matter was resolved with or without an inquiry and except where the Respondent has been exonerated in the previous complaint;
- (f) "GSICC" means the High Court Gender Sensitisation and Internal Complaints Committee constituted under Regulation 4;
- (g) "Internal sub-Committee" means the sub-committee set up under Regulation 9;
- (h) "Member" means a Member of the GSICC;
- (i) "Prescribed" means prescribed by the present Regulations;
- (j) "Respondent" means a person against whom the aggrieved woman has made a Complaint under the present Regulations;
- (k) "Sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-
  - (i) physical contact and advances;
  - (ii) a demand or request for sexual favours;
  - (iii) making sexually coloured remarks;
  - (iv) showing or exhibiting pornography and/or sexually explicit materials by any means;
  - (v) sending undesirable sexually coloured oral or written messages, text messages, e-mail messages, or any such messages by electronic, manual or other means;
  - (vi) stalking or consistently following aggrieved woman in the High Court precincts and outside;
  - (vii) voyeurism including overt or tacit observation by the Respondent by any means of the aggrieved woman in her private moments;
  - (viii) any conduct whereby the Respondent takes advantage of his position and subjects the aggrieved woman to any form of sexual harassment and seeks sexual favours specially while holding out career advancements whether explicitly or implicitly, as an incentive or a natural result of submitting to the insinuations/demands of the Respondent;
  - (ix) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;
  - (x) implied or explicit promise of preferential treatment in her career or other lawful endeavours;

- (xi) implied or explicit threat of detrimental treatment in her career or other lawful endeavours;
- (xii) implied or explicit threat about her present or future career or other lawful endeavours;
- (xiii) interferes with her work or creating an intimidating or offensive or hostile work environment for her having reference to or bearing on her sex; or
- (xiv) any treatment having a sexual colour or content likely to affect her emotional and/or physical health or safety.

(l) "High Court of Sikkim precincts" means the whole premises of the High Court including the Phase-I and II Buildings, open grounds, parking, canteen, Bar-rooms, and/or any other part of the premises under the control of the Hon'ble Chief Justice.

(m) "Volunteer" means lawyers or other persons enlisted by the GSICC without any remuneration basis for carrying out of the objects and purpose of these Regulations.

**3. Prevention of sexual harassment –**

No woman shall be subjected to sexual harassment at the High Court of Sikkim precincts.

## **CHAPTER II**

### **COMPOSITION & CONSTITUTION OF GENDER SENSITISATION & INTERNAL COMPLAINTS COMMITTEE**

**4. Constitution of the Gender Sensitization & Internal Complaints Committee –**

- (1) The High Court GSICC is constituted herein to fulfill a very important public function of sensitizing the public to gender issues and to address any complaints made with regard to sexual harassment at the High Court precincts.
- (2) The Chief Justice shall, by an order in writing, constitute a Committee to be known as the "High Court Gender Sensitisation and Internal Complaints Committee" (GSICC) which shall consist of not less than 7 members and not more than 13 members and shall include the following as far as practicable:
  - (a) one or two Judges of the High Court in terms of the judgment in the case of Vishaka, one of whom shall be the Chairperson of the Committee, to be nominated by the Chief Justice;
  - (b) one or two senior members of the Bar, with at least 15 years of membership of the Bar Association of Sikkim or other Bar Associations to be nominated by the Hon'ble Chief Justice, one of whom being a woman;
  - (c) one or two members to be elected by General Ballot of any of the Bar Associations of Sikkim who shall be registered member of the concerned Bar Association for at least 10 years out of whom at least one shall be a woman. In case only one such member she shall be a woman;

- (d) one woman member being a member of any of the Bar Associations of the State elected by General Ballot of the concerned Association;
- (e) one woman member being an employee of the High Court not below the rank of Additional/Joint/Deputy Registrar;
- (f) at least one and at the most two outside members to be nominated by the Chief Justice from persons who are associated with the Social Welfare Department or non-government organization having experience in the field of Social Justice, Women Empowerment, and/or gender justice, out of whom at least one member shall be a woman. In case of only one such member she shall be a woman;
- (g) one woman officer in the service of the High Court not below the rank of Deputy Registrar to be nominated by the Hon'ble Chief Justice, who shall function as the Member Secretary of the GSICC; and
- (h) any other member that the Chief Justice may deem fit to nominate;

Provided that it shall be ensured that the majority of the members of GSICC shall be woman members.

- (3) The outside Member appointed under Clause 4(2)(f) shall be paid such fees or allowances from the allocated funds for holding the proceedings of the GSICC as may be prescribed.
- (4) Where the Chairperson or any Member of the GSICC-
  - (a) has been convicted for an offence or any inquiry into an offence under any law for the time being in force is pending against him/her;
  - (b) fails to constitute an Internal sub-Committee to inquire into a particular Complaint;
  - (c) fails to take action under Regulation 11;
  - (d) contravenes or attempts to contravene or abets contravention of other provisions of these Regulations or any notifications/orders issued thereunder;
  - (e) in the opinion of the Chief Justice has so abused his/her position as to render his/her continuance in office prejudicial to the exercise of functions of the GSICC; such Chairperson or Member, as the case may be, shall stand removed forthwith from the GSICC by a written order of the Chief Justice and the vacancy so created shall be filled by fresh nominated/election in accordance with the provisions of these Regulations within 30 days of such removal.

##### **5. Term of Gender Sensitization & Internal Complaints Committee members -**

The term of each member of the GSICC shall be for two years, subject to the member being elected/nominated for a maximum period of two terms, and a member who has been removed under Regulation 4(4) shall not be eligible for re-nomination or re-election. The Chairperson and the other High Court Judge-Member, if any, shall continue subject to written consent from the Chief Justice in that regard.

**6. Meetings of the Gender Sensitisation & Internal Complaints Committee –**

- (1) The GSICC shall meet at least once in two months in a calendar year.
- (2) Members shall be intimated of meetings and agenda in writing and/or by electronic communication by the Member Secretary.
- (3) Minutes of all meetings shall be recorded, confirmed and adopted. The Member Secretary shall circulate the minutes of a meeting and the Resolutions so passed to all Members of the GSICC within 7 days of the holding of the meeting or the passing of the Resolution.
- (4) The Ordinary Meeting shall be called by the Chairperson with minimum seven days notice to all members.
- (5) Any members of the GSICC may at any time request the Chairperson to call an Emergency Meeting with a notice of Forty-Eight hours. However, this will not prevent the Chairperson from convening an emergency meeting without 48 hours notice.
- (6) The quorum of all Meeting shall be one-third of the members of the GSICC including the Chairperson. In the event the quorum is not completed for any meeting, an adjourned meeting shall be held within the next 10 days following, for which no quorum shall be required.
- (7) All motions shall be carried by a simple majority of those present and voting at all meetings, except where it is specifically provided for.

Whenever a Complaint is received or a Report of the Internal sub-Committee is submitted, the Member-Secretary shall within a period of 7 days request the Chairperson to call either an Ordinary or Emergency Meeting to take action on the same, and the Chairperson shall call a meeting for this purpose not later than 15 days from the date of the Complaint or the Report.

If a Member does not attend 3 consecutive meetings he/she shall be liable to removal forthwith by the Chief Justice, and the vacancy so created shall be filled in accordance with Regulation 4.

- (8) During the absence of the Chairperson owing to any reason, the Chief Justice shall designate any of the members for presiding over the meeting(s).
- (9) The office of the GSICC shall be at a place as designated by the Chief Justice.

**7. Functions of the Gender Sensitization & Internal Complaints Committee –**

- (1) GSICC shall be responsible for framing a Policy from time to time and its implementation with regard to gender sensitization and prevention and redressal of Sexual Harassment in the High Court.
- (2) Gender Sensitization and Orientation: GSICC shall take the following steps with regard to gender sensitization and orientation:
  - (i) GSICC will ensure the prominent publicity of the Policy on gender sensitization and prevention and redressal of Sexual Harassment in the High Court of Sikkim in all places in the High Court precincts such as the Court Building, old and new Chamber Blocks, library, health centre, canteens etc.

- (ii) GSICC will organize programmes for the gender sensitization of the High Court community through workshops, seminars, posters, film shows, debates, displays, etc.
- (iii) GSICC shall submit an Annual Report by December 31 every year to the Chief Justice which shall be made public outlining the activities undertaken by it and charting out a blueprint for the activities/steps to be taken up in the following year along with necessary budget allowances required by it. The GSICC shall include in its Annual Report the number of cases filed, if any, and their disposal under these Regulations in the annual report.
- (iv) GSICC may enlist the help of NGOs, associations, volunteers, lawyers, lawyers' bodies, or the concerned legal services authorities to carry out these programmes.
- (v) GSICC will enlist and activate an adequately representative team of volunteers and shall ensure the widespread publicity of the contact details (both official and personal) of all its members and volunteers. The services of such volunteers shall be available at all times to any aggrieved woman or any person in need of consultation or guidance. Volunteers will also assist in the gender sensitization, crisis mediation and crises management duties of GSICC, but shall not participate in the task of formal redressal of complaints under these Regulations and Procedures.
- (vi) GSICC will organize and train members and volunteers to equip them to handle sexual harassment cases including legal and medical aspects of aid.

(3) Crisis Management – GSICC shall ensure that there is quick and responsive crisis management, counselling and medical facilities, wherever necessary, available to all aggrieved women expeditiously.

GSICC will coordinate with the High Court security services to devise ways and means by which a system or prevention of and crisis management that is both gender-sensitive as well as prompt and effective is put in place. It will maintain regular contact through the Member Secretary with the High Court security services to ensure that in crises arising out of incidents of sexual harassment, GSICC members, and/or the volunteers identified by it, shall be intimated of such incidents without delay.

(4) Complaint Redressal – The GSICC shall ensure that every complaint of an aggrieved woman is adequately dealt with in accordance with the established procedure and with complete sensitivity. The GSICC shall have the power to inquire into and pass orders against the Respondent/deviant/delinquent in a complaint made in relation to any form of sexual harassment in the precincts of the High Court.

## CHAPTER III

### COMPLAINT & INQUIRY INTO COMPLAINT

#### 8. Complaint of Sexual Harassment –

- (1) Any aggrieved woman may make a complaint in writing of sexual harassment at the High Court of Sikkim precincts to the GSICC through the Member Secretary or directly or through any intermediary;

**Provided** that where the aggrieved woman is unable to make such a complaint in writing due to any reason, the Member of the GSICC or volunteer, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

- (2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or for any other reason, her legal heir or such other person directly concerned with her interests may make a complaint under these Regulations.
- (3) In appropriate cases the GSICC may *suo moto* take cognizance of the incidents of sexual harassment.
- (4) The aggrieved woman shall as of right be allowed to be accompanied by an aide during any proceedings under these Regulations.

#### 9. Inquiry into complaint –

- (1) On receiving a complaint and upon being satisfied with regard to the genuineness of the Complaint, the GSICC shall constitute an Internal Sub-Committee to conduct a fact finding inquiry, which shall comprise of three members of the GSICC itself, or such other persons as to be so nominated by the GSICC in its meeting, with majority members being women, and at least one person being an outside member.
- (2) The Internal sub-Committee shall conduct an inquiry and shall hear and duly record the statements of the aggrieved woman, the Respondent, and any other person the said parties wish to examine, subject to the provisions of Regulation 13(2), and thereafter it shall prepare a Report and enclose therein the complete proceedings of the Inquiry.
- (3) The fact finding inquiry into a Complaint shall be conducted and completed within 90 days of the Constitution of the Internal Sub-Committee and in any case within 120 days of the receipt of the complaint.

**Provided** that the validity of any inquiry shall not be called into question upon the inquiry not being completed with the stipulated period due to reasons beyond the control of the Internal sub-Committee.

#### 10. Inquiry Report –

- (1) On the completion of an inquiry under these Regulations, the Internal sub-Committee shall provide the Inquiry Report of its findings along with the complete

record of the inquiry proceedings including the pleadings and all the material on record to the GSICC within a period of ten days from the date of completion of the inquiry and such Report shall also be made available to the concerned parties.

- (2) Where the Internal sub-Committee arrives at the conclusion that the allegation against the Respondent has not been proved, it shall recommend to the GSICC that no action is required to be taken in the matter.
- (3) Where the Internal sub-Committee arrives at the conclusion that the allegation against the Respondent has been proved, it shall recommend to the GSICC to take appropriate action for gender discrimination and/or sexual harassment.
- (4) Upon consideration of the material on record and the Inquiry Report of the Internal Sub-Committee, if more than two-thirds of the members of the GSICC differ from the conclusion of the Internal sub-Committee, the GSICC shall after hearing the aggrieved woman and Respondent in person, record its reasons to so differ and take consequent action accordingly.
- (5) The GSICC shall pass orders either accepting or rejecting the Inquiry Report of the Internal Sub-Committee and thereafter pass consequent orders that may be appropriate and necessary for putting an end to the sexual harassment and take all steps to secure justice to the victim of sexual harassment within 45 working days of submission of the Inquiry Report of the Internal sub-Committee.

Provided that the validity of the orders of the GSICC shall not be called into question upon the same not being passed within the stipulated time.

## **11. Orders on Inquiry Report –**

- (1) Subject to Regulation 9(1) above, the GSICC shall have the power to pass the following orders to secure justice to the victim of sexual harassment:
  - (a) admonition;
  - (b) admonition with publication of such admonition in the Court precincts including cause lists and High Court Website;
  - (c) prohibition from harassing the victim in any manner including, but not limited to, prohibition from communicating with her in any manner such as phones, messages, electronic means, physical or other means for a specified period; and
  - (d) subject to Regulation 11(2), pass all orders, directions, and/ or direct taking steps necessary for putting an end to the sexual harassment of the aggrieved woman.
- (2) GSICC will also have the power to recommend to the Chief Justice to pass orders against the Respondent including, but not limited, to the following:
  - (a) debarment of entry into the High Court precincts for a specified period extending upto a maximum period of one year; and
  - (b) in appropriate cases, to recommend filing of a criminal complaint and/or a disciplinary complaint before the concerned disciplinary authority governing the Respondent (including the concerned Bar Council/Association) for

taking appropriate action, and the Chief Justice may pass orders thereon subject to Regulation 12.

- (3) The GSICC shall pass orders on the Inquiry Report and/or shall make recommendations to the Chief Justice of India within 45 working days of the submission of the Inquiry Report and communicate the same to the parties forthwith.
- (4) The GSICC and the Internal sub-Committee shall have the jurisdiction to inquire into a complaint and take any action thereon notwithstanding that any criminal complaint or any other complaint under any other law (including a disciplinary proceeding under the Advocates Act, 1961) may have been filed with respect to the same complaint/actions.
- (5) The orders of the Chief Justice and the GSICC shall be final and binding on the parties.

**12. Representation –**

- (1) Any person aggrieved by the order passed (or not passed) by the GSICC under Regulation 11(1), or recommendation made by the GSICC to the Chief Justice under Regulation 11(2), or non-implementation of such orders or action may make a representation to the Chief Justice who shall have the power to set aside or modify the orders passed or the recommendation made as the Chief Justice may deem fit, and also have the power to issue such orders or directions that may be necessary to secure complete justice to the victim of sexual harassment.

The representation under Regulation 12(1) shall be preferred within a period of ninety days of communication of the order or recommendation, or before the lapse of ninety days since the request for passing appropriate orders under Regulation 11 is made.

**13. Restraint Order –**

- (1) On the receipt of a Complaint and during the pendency of an Inquiry, on a written request made by the aggrieved woman, the GSICC if it considers it fit and proper may, after giving an opportunity to the Respondent to make his representation, if any, recommend specific interim measures to be taken in a signed decision to the Chief Justice, who on receipt thereof shall pass such interim orders that may be required for the personal safety and for safeguarding the dignity of the aggrieved woman, and both the aggrieved woman and the Respondent shall be bound by the same. Nothing in these Regulations shall prevent the Chief Justice from passing interim orders *ex parte* if the circumstances so warrant.
- (2) Upon disobedience, defiance or violation of the order passed under clause (1) above by the Respondent, the GSICC shall close and/or strike off the defense of the Respondent and pass final orders under Regulation 10(5) and Regulation 11.
- (3)

- (a) for the effective implementation of the present Regulations;
- (b) for development of relevant information, education, communication and training materials, the for organization of awareness programmes, and for advancement of the understanding of the public of the provisions of these Regulations; or
- (c) for organizing orientation and training programmes for the members of the GSICC, Internal sub-committees, volunteers, counselors etc.

**19. Regulations not in derogation of any other law –**

- (1) The provisions of these Regulations shall be in addition to and not in derogation of the provisions of any other law or Services Rules for the time being in force.
- (2) The provisions of the present Regulations shall not bar any Court from taking cognizance of any offence punishable under any other enactment or law.

**"20. Presumption –**

- (1) In every proceedings under these Regulations the presumption shall be against the Respondent who shall have the opportunity to rebut the same.
- (2) The antecedents of the aggrieved person shall not be called in question in the proceedings under these Regulations except with the consent of the GSICC which shall only be given in exceptional cases and for reasons to be recorded.

**21. Retrospective Operation-**

These Regulations shall have retrospective effect/operation so as to cover all those incidents of sexual harassment which have hitherto not been reported. An affidavit sworn by the aggrieved woman affirming the reasons for not reporting the incident shall be annexed to the complaint.

**22. Duty to report-**

It shall be the duty of every officer or individual having knowledge of or the officer who is superior to the aggrieved woman (in case of working woman) or all her co-employees (including her subordinates), as the case may be, to report any incident of sexual harassment to which the aggrieved woman has been subjected, at the earliest possible opportunity.

**23. Power to remove difficulties-**

If any difficulty arises in giving effect to the provisions of these Regulations including the interpretation of any Regulation/provision thereof the matter shall be referred to the Chief Justice whose decision on the matter shall be final."

**BY ORDER OF HON'BLE THE CHIEF JUSTICE**

**K.C. BARPHUNGPA  
REGISTRAR GENERAL**